

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6073

BILL NUMBER: SB 12

NOTE PREPARED: Mar 25, 2006

BILL AMENDED: Mar 14, 2006

SUBJECT: DOC Administration of Sex Offender Registry.

FIRST AUTHOR: Sen. Long

FIRST SPONSOR: Rep. Foley

BILL STATUS: Enrolled

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

Management and Oversight of Sex Offenders – This bill redefines the legal terms for sex offenders and sexually violent predators, increases the responsibilities for local law enforcement agencies to monitor the activities of sex offenders and sexually violent predators, changes the responsibilities for administering the Statewide Sex Offender Registry, and changes the penalties and crimes associated with sex offenders and sexually violent predators.

Sex Offenders and Sexually Violent Predators – Under current law, convicted persons are determined to be a sex offender if they have committed a sex-related crime. Under current law, some sex offenders can be sexually violent predators if the sentencing court determines that the person has a mental abnormality or personality disorder that makes the individual likely to repeatedly engage in sex crimes. Courts are required to consult with two criminal psychiatrists or psychologists. As proposed, the definition of a sexually violent offender would be expanded to include persons at least 18 years of age who commit certain offenses and persons who commit an offense for which they must register as a sex offender who have a prior conviction for an offense for which they would be required to register as a sex offender.

State Agencies and Legislative Committees – The oversight of the Sex Offender Registry is transferred from the Indiana Criminal Justice Institute (ICJI) to the Department of Correction (DOC). The Sex and Violent Offender Directory is eliminated, and its functions are transferred to the Sex Offender Registry. ***Criminal Justice Institute*** – The new functions of the ICJI will be to seek grants to support the Sex Offender Registry. It repeals certain provisions concerning the Criminal Justice Institute's duties with respect to sex offenders.

Department of Correction – It removes a provision requiring a sex offender to register using a "registration form", and requires the DOC to establish a format for registration. It requires the DOC to transmit information concerning sex offenders to a neighborhood association, or to provide instructional material in the use of the Sex Offender Registry. It requires the DOC to inform and train judges, prosecuting attorneys, law enforcement officials, and others in the sex offender registration procedure. It requires that the Sex Offender Registry be updated daily and be available on the Internet. It establishes a procedure for determining which out-of-state sex offenders residing in Indiana are required to register and how long they are required to register. It requires the DOC to report annually to the Legislative Council concerning the Department's implementation of lifetime parole and GPS monitoring of sex offenders, including information concerning costs, recidivism, and proposals to reduce cost or increase efficiency. It requires the Department of Correction to report to the State Budget Committee before August 1, 2006, concerning the feasibility of recovering the expense of GPS monitoring from an offender. It permits the DOC to reduce good time credit for a sex offender who does not participate in a sex offender treatment program or who does not register before being released from incarceration. *Sentencing Policy Study Committee* – It requires the Sentencing Policy Study Committee to study issues related to sex offenders, including: (1) lifetime parole; (2) GPS monitoring; (3) a classification system for sex offenders; (4) recidivism; and (5) treatment and issues related to human trafficking. It adds a board-certified psychologist or psychiatrist appointed by the Governor to the Sentencing Policy Study Committee to act as a nonvoting advisor to the committee.

Local Law Enforcement Agencies – A local law enforcement authority is required to personally visit the listed address of a sex offender once a year and the local law enforcement authority to personally visit the residence of a sexually violent predator at least four times per year.

Responsibilities of Sex Offenders – The bill requires incarcerated sex offenders to register before being released, and shortens certain registration periods. It prohibits a sexually violent predator from working or volunteering on school property or at a public park or youth program center or at an amusement attractive to children. It prohibits certain sex offenders from residing within: (1) 1,000 feet of a school, public park, or youth program center; or (2) one mile of the victim's residence. It prohibits a sex offender from obtaining a waiver for certain residency restrictions imposed as part of probation or parole. It specifies that a sex offender's principal residence is the residence where the offender spends the most time. It imposes additional registration and notification requirements on sex offenders, including a requirement that a sexually violent predator notify law enforcement officials if the predator will be absent from the predator's principal residence for more than 72 hours. It requires a sexually violent predator to initially register not more than 72 hours after release from incarceration or supervision, and requires all sex offenders to register in person at least once per year. It requires a sex offender to possess a valid driver's license or state identification card. It requires a sex offender who temporarily resides in transitional housing to register once every seven days, and it provides various penalties for violations of these provisions. A juvenile court is also prohibited from appointing a person to serve as the guardian or custodian of a child if the person is a sexually violent predator or has committed certain sex offenses.

Monitoring of Sex Offenders and Sexually Violent Predators – Sex offenders are required to register with the State Sex Offender Registry. The Registry makes public information on where sex offenders live and work. Sex offenders must contact the local law enforcement authority when they change residences or jobs. A sexually violent predator who commits an offense after June 30, 2006, besides registering with the Sex Offender Registry, must be placed on lifetime parole when the person's term of imprisonment is completed. A sexually violent predator placed on lifetime parole must wear a GPS monitoring device. If a person being supervised on lifetime parole is also required to be supervised by a probation department or similar agency,

the probation department or similar agency may have sole supervision of the person if the parole board finds that supervision by the probation department or other agency will be at least as stringent and effective as supervision by the parole board. It specifies that a sexually violent predator in another state whose parole is transferred to Indiana may also be required to be placed on lifetime parole.

New Penalties and Crimes – It provides that a person who violates a condition of lifetime parole after the person's lifetime parole has been revoked two or more times or after completing the person's sentence (including any credit time) commits a Class D felony if the violation involves contact with a child or a victim of the child molesting offense of which the person was convicted, and a Class C felony if the person has a prior unrelated lifetime parole violation conviction. It adds crimes committed in other states that are substantially similar to certain Indiana sex crimes to the list of underlying offenses that permit a person to be charged as a repeat sexual offender.

DNA Exceptions – It provides that the DNA exception to the statute of limitations for Class B, C, and D felonies applies when DNA analysis provides evidence sufficient to charge a person with an offense. (Currently, the DNA exception applies when DNA analysis permits the discovery of the offender's identity.) It requires certain persons not committed to the Department of Correction to submit a DNA sample.

Offenders Convicted of Stalking – It permits a court or the parole board to prohibit a probationer or parolee who has been convicted of stalking from residing within 1,000 feet of the home of the victim. It provides various penalties for violations of these provisions.

Matter Harmful to Minors – It makes it a Class D felony to rent matter that is harmful to a minor within 500 feet of a school or church.

Effective Date: Upon Passage; July 1, 2006.

Explanation of State Expenditures: Sex Offenders and Sexually Violent Predators – The most fiscally significant provision of this bill is expanding the definition of a sexually violent predator and requiring sexually violent predators to be on lifetime parole with GPS monitoring. Under current law, a court is required to consult with two board-certified psychologists or psychiatrists and then determine whether the defendant in a sex crime is a sexually violent predator. As proposed, a person would automatically be a sexually violent predator because they committed certain sex crimes as a first-time offense or, in some cases, if one or more prior unrelated offenses were committed. Defendants in sex crimes who are not automatically determined to be a sexually violent predator will still be required to be examined by two board-certified psychologists or psychiatrists to determine whether they are sexually violent predators. Persons determined by either the statute or by the court to be a sexually violent predator may petition the court to consider whether the person is a sexually violent predator not earlier than ten years after the court makes its initial finding or when the person is released from incarceration.

The added costs for monitoring these offenders with GPS equipment will begin in FY 2008 and could continue increasing over the next 20 to 30 years, depending on whether or not a court determines a person is still a sexually violent predator. The specific costs will depend on the organizational and technological advances that can be made as more offenders are released and need to be monitored. Assuming that the costs of monitoring and supervising sexually violent predators remains in constant 2006 dollars, the costs for GPS monitoring could be \$8.6 M within ten years.

The following table illustrates which sex crimes would be grounds for determining a defendant to be a sexually violent offender.

Number of Convictions Needed to Automatically Be a Sexually Violent Predator By Offense and Felony Level				
Offense	Class A	Class B	Class C	Class D
Rape or criminal deviate conduct	First Time			
Child molesting	First Time		Prior	
Child exploitation			Prior	
Vicarious sex gratification involving fondling compelled by use of force, weapons, or drugs		First Time		
Vicarious sex gratification involving sexual intercourse compelled by use of force, weapons, or drugs	First Time			
Vicarious sex gratification involving fondling with child 14 or 15				Prior
Vicarious sex gratification involving fondling where child less than 14			First Time	
Vicarious sex gratification involving animals			First Time	
Sexual conduct in the presence of a minor				Prior
Child solicitation			Prior	
Child seduction				Prior
Sexual misconduct with a minor		Prior		
Incest		Prior		
Sexual battery			Prior	
Kidnaping of person younger than 18	Prior			
Criminal confinement of person less than 18			Prior	
Possession of child pornography				2 Priors
Attempt, conspiracy, related offenses in other jurisdictions		Prior		
First Time – First-time Offense; Prior – When offender has been convicted of committing one prior unrelated sex offense; 2 Priors - When offender has been convicted of committing two prior unrelated sex offenses.				

Background on Supervision of Sex Offenders – By law, sex offenders must serve a minimum sentence in a DOC facility. IC 35-50-2-2(d) allows a court to sentence the sex offender for a minimum term and, upon release, place the offender on probation for not more than 10 years. If the offender is given a full sentence with no early release on probation, the offender may earn time cuts for good behavior and for earning educational degrees and vocational certificates.

IC 35-50-6-1(d) requires an offender who is released early because of accrued credit time to be placed on parole for a maximum of 10 years upon release. Offenders can also be released into a community transition program operated by a probation department or community corrections program (CTP). Community transition

assignments are usually short term compared to probation or parole assignments. Some offenders serve their entire sentences without early release because they earned no credit time.

Projected Number of Sexually Violent Predators Released Each Year -- Based on release data between CY 2000 and 2004, the following represents the number of sex offenders who would be considered sexually violent offenders when they are released from DOC facilities.

Average Number of Sexually Violent Predators Released Annually*					
	<u>Class A</u>	<u>Class B</u>	<u>Class C</u>	<u>Class D</u>	<u>Grand Total</u>
Rape	27	69			96
Crim Deviate Conduct	7	25			32
Child Molesting	8	154	21		183
Child Exploitation			3	1	4
Vicarious Sex Gratif			0	0	0
Child Solicitation			1	2	3
Child Seduction				2	2
Sex Misconduct-Minor		5	1		6
Incest		1	1		2
Sexual Battery			0	5	5
Kidnapping	1				1
Criminal Confinement	-	<u>1</u>	-	<u>2</u>	<u>3</u>
Grand Total	<u>43</u>	<u>255</u>	<u>27</u>	<u>12</u>	<u>337</u>
*Based on Releases from DOC between 2000 and 2004.					

Offenders sentenced as sexually violent predators are placed on parole for the remainder of their lives and required to wear a monitoring device that can transmit information about the offender's precise location 24 hours per day. This bill also permits other sex offenders who are not sexually violent predators to wear monitoring devices upon the discretion of the parole board.

The offender sentenced as a sexually violent predator may be placed on probation if the parole board determines the other supervising authority will be at least as stringent and effective as supervision by the parole board. Since offenders on parole are required to have these monitoring devices, it is assumed offenders on probation will also need to be using global positioning systems as well. Consequently, this bill would mandate probation departments to use global position monitoring if the offender sentenced as a sexually violent predator is placed on probation.

The potential impact on sentencing patterns is currently indeterminable. On average between 2000 and 2004, 60% of all offenders who were sentenced for a sex crime were released on parole and discharged after serving a full sentence or released to a community transition program, while 40% were released on probation. Under this bill, offenders who are released on parole or discharged after serving their entire sentences will be on parole

and require GPS monitoring for the rest of their lives unless the court decides that the offender should no longer be considered a sexually violent predator. It is not clear whether courts who give offenders split sentences for sex offenses where an offender is determined to be a sexually violent predator will continue to do so if they are required to use global position monitoring.

To make the following estimate, it is assumed that all offenders released from DOC will be placed on parole.

Future parole populations are affected by four variables:

- the number of offenders released each year;
- the average age at release;
- the recidivism rate of the offenders; and
- whether the offender petitions and if the sentencing court no longer considers the offender to be a sexually violent offender.

The following table presents these factors.

Variables Affecting Costs of GPS Monitoring and Parole Supervision				
	<u>Class D</u>	<u>Class C</u>	<u>Class B</u>	<u>Class A</u>
Sexually Violent Predators Released Each Year	12	27	255	43
Average Length of Stay (In Years) in DOC	1.0	2.5	4.6	12.6
Year Offender Will Begin GPS	2008	2009	2011	2019
Average Age at Release from DOC Facility	33	36.5	37.6	42.6
Average Age When Beginning Lifetime Parole	43	46.5	47.6	52.6
Years Offenders Would Be on Lifetime Parole	34	30.5	29.4	24.4
Recidivism Rate Based on Offenders Released in 2001	40%			

The fiscal effects from this bill will begin occurring in FY 2008 when Class D felons who were committed in 2007 will be released. Little or no information is available at the state level about the current number of offenders who have been determined by the courts to be sexually violent predators under IC 35-38-1-7.5. DOC estimates that fewer than 50 are currently either in DOC facilities or have been released and that roughly two offenders are determined to be sexually violent predators in any given year.

Potential Costs are Difficult to Predict – Predicting the future costs of providing these offenders with GPS monitoring and lifetime parole supervision is difficult due to changes in technology, organizational arrangements, and future decisions by sentencing courts. The cost of GPS monitoring has decreased rapidly in the past five years. The costs of actual staff monitoring may depend on the arrangements that the DOC makes with local probation and community correction programs. Since offenders may also petition the court after ten years to no longer be considered a sexually violent predator, the number of sexually violent predators needed to be monitored will also depend on the judgment of the sentencing courts.

GPS Costs – The immediate effect of this bill will result in increased parole supervision costs as sexually violent predators are released from DOC and required to wear a monitoring device. Since this bill only applies to crimes committed after June 30, 2006, the earliest that this bill could affect the DOC would be in FY 2008

because Class D felons have an average length of stay of one year. The following tables illustrate the potential costs associated with these requirements based on costs in 2006 for mandatory GPS monitoring.

Potential Costs in \$Million for GPS Monitoring for Sexually Violent Predators in 2006 Dollars													
Felony Class	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Class A												43	86
Class B				255	357	500	643	786	929	1,072	1,215	1,358	1,501
Class C		27	38	49	60	71	82	93	104	115	126	137	148
Class D	<u>12</u>	<u>24</u>	<u>29</u>	<u>34</u>	<u>39</u>	<u>44</u>	<u>49</u>	<u>54</u>	<u>59</u>	<u>64</u>	<u>69</u>	<u>74</u>	<u>79</u>
Totals	12	51	67	83	456	615	774	933	1,092	1,251	1,410	1,612	1,814
Est. Costs ¹	\$0.04	\$0.2	\$0.2	\$0.3	\$1.6	\$2.2	\$2.8	\$3.4	\$3.9	\$4.5	\$5.1	\$5.8	\$6.5
¹ Costs of GPS estimated at \$3,600 per offender.													

Projected Costs for Lifetime Parole – Both the staff costs for supervising offenders on parole and offenders who return to DOC because of parole violations could increase costs to DOC. Supervisory costs can take one of two forms for DOC. DOC may increase the number of parole officers to supervise these offenders or contract with probation or community corrections agencies to provide the supervision. If parole staff is increased to supervise more offenders, more staff would likely be needed beginning in 2018 when offenders who were released from DOC in 2008 finish their 10-year maximum period on parole that they are required to serve under current law and begin the lifetime parole added by this bill. Currently, eight district offices have 91 parole officers and 36 other employees, including substance abuse counselors and support staff. The average annual parole population as of November 2005 was 8,144. Based on these statistics, the average number of offenders per parole officer is 90.

The following represents the added costs to the Department of Correction based on the average 2006 salary of \$50,100.

Potential Costs in \$Millions of Additional Offenders on Parole in 2006 Dollars Year Sexually Violent Predators (SVP's) Sentenced in 2007 Begin Lifetime Parole													
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	
Class A Felons*													26
Class B Felons*					153	306	459	612	765	918	1071	1224	
Class C Felons*		16	32	48	64	80	96	112	128	144	160	176	
Class D Felons*	<u>7</u>	<u>14</u>	<u>21</u>	<u>28</u>	<u>35</u>	<u>42</u>	<u>49</u>	<u>56</u>	<u>63</u>	<u>70</u>	<u>77</u>	<u>84</u>	
Added SVPs on Parole	7	30	53	76	252	428	604	780	956	1132	1308	1510	
New Officers Needed**			1	1	3	5	7	9	11	13	15	17	
Costs (in \$M) of New Officers			<u>\$0.5</u>	<u>\$0.5</u>	<u>\$1.5</u>	<u>\$2.5</u>	<u>\$3.5</u>	<u>\$4.5</u>	<u>\$5.5</u>	<u>\$6.5</u>	<u>\$7.5</u>	<u>\$8.5</u>	
* Assumes that 40% of original releases in 2007 have returned to DOC.													
** Based on 90 Offenders per Parole Officer.													

Minimum Time on Sex Offender Registry – Under current law, sex offenders must register for a minimum of ten years while sexually violent predators are required to register for life (IC 5-2-12-13). If more sex offenders are required to register for life instead of ten years, more offenders are likely to intentionally fail to register.

Offenders who knowingly or intentionally fail to register or to complete and submit a new registration form commit a Class D felony on a first offense and a Class C felony as a second offense (IC 5-2-12-9).

In CY 2004, 23 persons in 13 counties were committed to DOC facilities as Class D felons for not registering as a sex offender as a first-time offense.

Changes in Credit Time – This bill would allow DOC to deny credit time to sex offenders if they refuse to:

- register as a sex offender while in a DOC facility (used as a management tool); or
- participate in a sex offender treatment program specifically offered to the sex offender by DOC.

DOC indicated that loss of credit time would be used as a management tool to force offenders to comply. Offenders who may lose credit time for good behavior may regain the lost credit time. Consequently, these provisions would not likely increase future facility populations. DOC also offers sex offender treatment to the offenders that staff determine would benefit from the program. Consequently, the number of sex offenders participating in the program is limited. Sex offender treatment programs are located at the following male facilities: Miami, Correctional Industrial Complex, Putnamville, and Westville. Liberty Behavioral Health (LBH) is contracted to provide these services. By contract agreement LBH is to provide services for not fewer than 200 offenders at any given time. Currently, 220 sex offenders are enrolled in the treatment program.

Sentencing Policy Study Committee – The bill also adds a series of topics for the Sentencing Policy Study Committee to examine and requires that one board-certified psychologist or psychiatrist appointed by the Governor act as a nonvoting member of the Committee. The Sentencing Policy Study Committee currently consists of 19 members.

DNA Exceptions and Requirements – Under current law, a prosecution for an offense must be started within five years after a Class B, C, or D felony are committed. If the identity of the offender who committed the crime is established through DNA evidence after the five years, the prosecuting attorney may file charges within one year. As amended, this provision allows a prosecuting attorney to file charges after the five-year term of limitations if evidence is discovered that would be sufficient to charge a person with a crime through DNA analysis.

Allowing more tests to be done could increase the costs of processing for the Indiana State Police. The added cost per specimen is \$35.

This bill also requires a court to order a person who is convicted of a felony who is not required to be committed to a DOC facility to provide a DNA sample to the county sheriff or the designee of the county sheriff. Under current law, any person convicted of a felony, conspiracy to commit a felony, or attempt to commit a felony is required to provide a DNA sample (IC 10-13-6-10). In essence, this requirement would not represent new costs to the Indiana State Police. The number of offenders who are sentenced to probation for a felony between 2000 and 2004 has increased by 7% annually.

Felony Offenders Directly Sentenced to Probation:						
<u>Calendar Year</u>	2000	2001	2002	2003	2004	Avg. Annual Change
Offenders to Be Typed	11,686	13,233	12,770	14,247	15,130	7%

The average expenditure to house an adult offender was \$20,977 in FY 2005. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The following table shows the minimum, presumptive and maximum sentences and average lengths of stay for Class A, B, and C felonies.

Felony Class	Minimum	Presumptive	Maximum	Average Length of Stay
A	20 Years	30 Years	50 Years	9.1 Years
B	6 Years	10 Years	20 Years	3.7 Years
C	2 Years	4 Years	8 Years	2 Years
D	Six Months	1.5 Years	3 Years	10 Months

Explanation of State Revenues: *Violation of Lifetime Parole by Sex Offenders* – If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class C and Class D felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Explanation of Local Expenditures: *Extending the Minimum Period of Registering as a Sex Offender or Sexually Violent Predator* – Currently, each local law enforcement agency (LLEA) has identified staff to monitor sex offender registration. Extending the amount of time that offenders must register as sex offenders will increase the responsibilities of the local law enforcement agencies. Their responsibilities include:

- forwarding a copy of a sex offender's registration form to the DOC and every local law enforcement agency having jurisdiction in the area where the offender is located;
- taking and publishing photographs of offenders on the Sheriffs' Sex Offender Registry web site;
- informing other local law enforcement agencies if an offender moves, starts employment, vocation, or enrollment within another LLEA's jurisdiction;
- notifying other states if an offender changes residence, place of employment, or enrollment to the other state;
- verifying offenders' addresses; and
- notifying the prosecuting attorney and DOC if an offender fails to return a signed registration form.

Increasing the number of offenders who will be monitored as sexually violent predators could increase costs to the local law enforcement authorities. These agencies will be required to send notifications in the mail to the sexually violent predators and make personal visits to their residences. The added costs for these types of responsibilities was not able to be estimated.

Restrictions on Stalkers – Stalking is defined in statute as a knowing or an intentional course of conduct involving repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened and that actually causes the victim to feel terrorized, frightened, intimidated, or threatened. The term does not include statutorily or constitutionally protected activity (IC 35-45-10-1). Stalking is a Class D felony and can be enhanced to either a Class C or B felony under certain circumstances. As a felony, offenders sentenced for stalking can be committed to DOC. A court can suspend a person's sentence for stalking, so an offender can be sentenced to probation or community corrections.

The number of offenders statewide who have been sentenced to probation or community corrections for stalking is not known. As of November 21, 2005, 46 offenders were in DOC facilities for the offense of stalking.

Offenders in DOC Facilities on November 21, 2005, for Stalking	
Felony Class	Offenders
Class B	6
Class C	32
Class D	8
Total Offenders	46

Explanation of Local Revenues: Monitoring of Sex Offenders on Probation – A portion of the costs associated with these systems can be offset from user fees collected from offenders on parole.

Sex Offenders' Violation of Lifetime Parole – If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association, Department of Correction.

Fiscal Analyst: Mark Goodpaster, 317-232-9852.